

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MITCHELL BRACKNELL,

Plaintiff,

v.

THE COUNTY COMMISSION OF
MONTGOMERY COUNTY, ALABAMA;
SHERIFF D.T. MARSHALL; AND A-Z
Fictitious Defendants,

Defendants.

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Civil Action Number: 2:06cv3111-WKW

MOTION TO DISMISS

COMES NOW Defendant Gina Savage, pursuant to Rule 12(b)(6), Fed. R. Civ. P., and moves this Court to dismiss all claims asserted against her in the Plaintiff's Amended Complaint (Doc. # 26.1). Defendant shows as follows:

1. Plaintiff's Complaint, as amended, fails to state a claim against this Defendant for which relief can be granted.

2. Plaintiff's claims based on *respondeat superior* should be dismissed because this is not actionable under 42 U.S.C. § 1983.

3. Plaintiff's Eighth Amendment claim should be dismissed because the Eighth Amendment provides no protection for the Plaintiff in this case.

4. Plaintiff's claims against Defendant Savage in her official capacity should be dismissed because Defendant is entitled to immunity pursuant to the Eleventh Amendment.

5. Plaintiff's 42 U.S.C. § 1983 claims against Defendant Savage in her official capacity should be dismissed because Defendant is not a "person" under 42 U.S.C. § 1983.

6. Plaintiff's claims against Defendant Savage in her individual capacity should be dismissed because Defendant is entitled to qualified immunity.

7. Plaintiff's Complaint fails to state a claim against Defendant for failure to train or for supervisor liability pursuant to 42 U.S.C. § 1983.

WHEREFORE, THE PREMISES CONSIDERED, Defendant Gina Savage respectfully requests that this Court enter an order dismissing all claims against her in the Plaintiff's Amended Complaint, and awarding the Defendant any other relief to which she may be entitled.

/s/Constance C. Walker
Thomas T. Gallion, III (ASB-5295-L74T)
Constance C. Walker (ASB-5510-L66C)
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following counsel:

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/s/Constance C. Walker
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